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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,138	06/20/2001	Mitsuru Uchiyama	AAO-256	2473
23353	7590	11/03/2003	EXAMINER	
RADER FISHMAN & GRAUER PLLC	LION BUILDING		PATEL, NIHIL B	
1233 20TH STREET N.W., SUITE 501			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036			3743	

DATE MAILED: 11/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/884,138	UCHIYAMA ET AL.
	Examiner	Art Unit
	Nihir Patel	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on September 26th, 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 3-6 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasso Jr. US Patent No. 5,603,315 in view of Hill et al. US Patent No. 6,401,713.

Sasso discloses the applicant's invention as claimed with the exception of providing an orifice, provided on the conduit upstream of the valve.

Hill discloses an apparatus and method of providing continuous positive airway pressure that does provide an orifice 48 (see figures 1 and 2), provided on the conduit upstream of the valve. Therefore it would be obvious to modify Sasso's invention by providing an orifice, provided on the conduit upstream of the valve in order to have better control of flow rate.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sasso Jr. US Patent No. 5,603,315 and Kloeppe US Patent No. 5,865,174.

Sasso discloses the applicant's invention as claimed with the exception of stating that the pressure sensor is an electric capacitor type pressure sensor having a capacitor of which the electrostatic capacitance represents the detected pressure.

Kloeppe discloses a supplemental oxygen delivery apparatus and method that does state that the pressure sensor is an electric capacitor type pressure sensor having a capacitor of which the electrostatic capacitance represents the detected pressure. Therefore it would be obvious to

modify Sasso's invention by stating that the pressure sensor is an electric capacitor type pressure sensor having a capacitor of which the electrostatic capacitance represents the detected pressure in order for the invention to function to its fullest capacity.

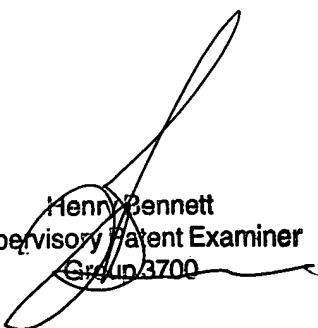
Also the type of pressure sensor used in the invention is simply a matter of design choice as stated in the specification by the applicant. (page 3 lines 21-23; "that the pressure sensor can be any kind of pressure sensor which provides an electric signal representing the pressure in the conduit.").

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30am to 4:30pm. If attempts to reach the examiner by telephone are unsuccessful the examiner's supervisor Henry Bennett can be reached at (703) 308-0101.

NP
October 27, 2003


Henry Bennett
Supervisory Patent Examiner
Group 3700